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IN THE
Supreme Court of the United States

October Term, 1961

No. 70

THEODORE R. GIBSON,

Petitioner,

v.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF FLORIDA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Florida (R. 262) is reported at 126 So. 2d 129.

Jurisdiction

The judgment of the Supreme Court of Florida was entered on December 19, 1960 (R. 262). Application for rehearing was denied on January 17, 1961 (R. 269), but on the same day, in a separate order, execution and enforcement of the judgment was stayed for 60 days to permit petitioner to seek review of this cause here (R. 270). Accordingly, petition for writ of certiorari was filed in this Court on March 20, 1961 and granted on May 8, 1961 (R. 271). Jurisdiction of this Court to review the judgment below rests on Title 28, United States Code, Section 1257(3).

Question Presented

Whether it is a violation of constitutionally guaranteed rights of freedom of association to require petitioner, as custodian of the N.A.A.C.P. membership list, to bring those records to hearings of the respondent committee to authenticate his answers to inquiries concerning membership in the organization of alleged Communists, where the inevitable consequence is the public discrediting of the legitimacy of the N.A.A.C.P. as an organization and of the loyalty of its members, without justification therefor being established in a showing that petitioner or the N.A.A.C.P. is in some way connected with subversion?

Statute Involved

CHAPTER 59-207, LAWS OF FLORIDA, 1959

AN ACT to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Communist party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee's investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Courts and the Supreme Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order

against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court's stay order; and

WHEREAS, the issues embraced in said litigation involve fundamental principles of State's rights and State's sovereignty as against centralized Federal power and Government by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees' work, and to participate in and contest the efforts represented by the above referred to litigation to whittle away further at this State's rights and sovereignty, and to be every ready to investigate any agitator who may appear in Florida in the interim.

NOW THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. There is hereby created a special committee of the legislature to be composed of seven (7) members, three (3) of whom shall be appointed from the membership of the state senate by the president, and four (4) of whom

shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required; to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond

to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars (\$67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

Statement

The instant controversy has a long history. Although the creation of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation in which it is involved and from which this case arises began in 1956. In that year, pursuant to Chapter 34918, Laws of Extraordinary Sessions of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida.

The committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's consistent efforts to undermine racial discrimination were Communist inspired. A report was filed with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, however, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, pursuant to its statutory authority, held hearings in Miami and sought to secure physical possession of the membership list of the Miami Branch of the N.A.A.C.P., purportedly in order that the committee could determine the extent of Communist infiltration and influence in the Branch. Disclosure of the names of N.A.A.C.P. members was refused. Counsel for the committee, thereupon, secured a court order requiring that the membership list of the Branch be turned over to the committee. This order was resisted, but before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits.

After hearing, that court upheld Chapter 57-125, Laws of Florida, 1957, as being consistent with constitutional requirements. It concluded that the committee was engaged in a valid legislative purpose in seeking to uncover and determine the extent of Communist infiltration in organizations such as the N.A.A.C.P. On the rationale that the committee's investigation of subversion overbalanced the right to privacy and anonymity in one's associational relationships, the court concluded that *N.A.A.C.P. v. Alabama*, 357 U. S. 449, was inapposite, and that disclosure of membership in the organization could be required, con-

sistent with constitutional guarantees of freedom of speech and association. Therefore, the court decreed that the custodian of the N.A.A.C.P. membership list could be ordered to bring the list to committee hearings for the purpose of verifying answers to inquiries about membership in the organization of persons designated by the committee at subversive (108 So. 2d 729). Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, which had been formed pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no remedial legislation dealing with the problem of Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigations. The instant committee, however, was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

The November 4-5, 1959, Hearings in Tallahassee, Florida

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959, in the State Capitol Building at Tallahassee, and to bring the membership records in his possession or of which he was custodian, pertaining to the identity of the members and those making contributions to the local and state N.A.A.C.P. organizations.

At the outset, the Chairman of the respondent committee set forth the scope of the inquiry with which the committee

was concerned. His remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 8-13), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State . . . the Communist Party . . . and Communist-front organizations . . . their aims and objectives . . . and the decree, if any, to which Communists and Communistic influence has [sic] been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 12-13). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 13).

Arlington Sands, who, as it developed, was respondent's only witness with personal knowledge of the facts it sought to establish, was not present (R. 6). The first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He stated that he had conducted investigations concerning the activities of Communists in the South (R. 24); that one Augusta Birnberg was a member of the Communist Party (R. 24); that one Edward Waller had now left the Party, but was once a member, and "stated to me" that he had then been under instructions to infiltrate the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings at an unstated time in Dade County (R. 24); that a James Nimmo, now a resident of New York State, was once a Communist but was no longer associated with the Party (R. 25); that "information indicates" that one Abe Sorkin was a member of the Party and at one

time was a member of the N.A.A.C.P. (R. 25); that one Charles Marks was a member of the Party (R. 25); that "according to information in hand" Myron Marks was a member of the Party (R. 25); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P. (R. 26);¹ that Charles Smolikoff, a former Dade County resident, was a Communist (R. 26); that Tess Kantor, a one-time resident of Miami, was a Communist (R. 26); that Leah Adler Benomovsky, a former resident of Dade County, was a Communist (R. 27); that Louis Popp had once been a member but was no longer believed to be associated with the Party (R. 27); that Emanuel "Manny" Graff and Bobby Graff, once residents of Miami, were members of the Communist Party (R. 27); that Michael Santzek was a member of the Party (R. 27); and that "it is my information" that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. Then he read a list of 33 persons and stated that some were members of the Communist Party, and that each in the recent past had been active in Communist-front organizations in Dade County (R. 28). Strickland then gave the names of five persons whom he identified as "present and/or past" members of the Communist Party (R. 29).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 29). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation, and all ideological influences and practices of 'racial' theories . . ." and to "fight for the full social, political and economical equality of the Negro people, for Negro and white unity" (R. 30).

¹These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960, and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership records of the Miami Branch of the N.A.A.C.P., but that he had not brought those records with him (R. 31); that there were approximately 1,000 members in the Miami Branch (R. 33). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 31); that membership in the organization was for a 12-month period from the date of joining (R. 32); that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and unless his membership was renewed, his card was removed from the files. (R. 32). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 40).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter, had adopted resolutions condemning Communism and excluding from the organization all Communists and members of other subversive organizations. Copies of these resolutions were left with the committee (R. 35).

Petitioner volunteered to cooperate with the committee, by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership records at the committee hearings for the purpose of answering any such inquiries (R. 45). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership records at the committee hearings, and to testify from these records would create the same fears, concerns and deterrents to the exercise of rights of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership records being physically turned over to the committee (R. 37).

He was asked about 14 people previously identified as members of the Communist Party by Strickland (R. 24-28). He was given the names and shown photographs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 39-44). Then he was asked whether he would bring the N.A.A.C.P. membership records to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 45). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership records to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 64). He had been active in the organization prior to 1949, and had been a member off and on for the past ten years (R. 64). He had not been to an N.A.A.C.P. meeting in two years (R. 65). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Santzek (R. 65) and Leah Benomovsky (R. 66), but did not recall seeing them at N.A.A.C.P. meetings. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 67), and had never seen Marks' father at an N.A.A.C.P. meeting (R. 67). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the organization (R. 68). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. as an attorney during the period when he had been an official of the Branch, but he did not believe that Sheiner was a Communist (R. 70). He saw

Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 70). He saw James Nimmo at N.A.A.C.P. meetings (R. 70), but never saw Ed Waller at any (R. 71). He denied having ever told Strickland on the prior Wednesday that he had seen Augusta Birnberg (R. 72), Ed Waller (R. 72), Charles Smolikoff, Leah Benomovsky, Myron Marks (R. 73), or Mike Santzek (R. 73) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 72).

Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question as members of the Communist Party and of the N.A.A.C.P. (R. 74-75).

Vernell Albury (R. 76-86), Ruth Perry (R. 86-98), and G. E. Grayes (R. 98-103), Treasurer, Secretary and Counsel, respectively, of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P. although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Petitioner was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the organization. He pointed out that no such investigation of each individual member is possible. If, however, it comes to the attention of Branch officials that an individual member is engaged in subversive activities, action is commenced to terminate his membership in the N.A.A.C.P. (R. 105). There had been no expulsions from the Branch during the past five years because of subversive activities (R. 105).

The Court Proceedings

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership records at the committee hearings,

Q. All right, sir." (R.23-29)

Arlington J. Sands' testimony appears in the Record, pages 64 through 73. This witness is a life-long resident of Miami, Florida. (R.64) He though his membership in the Miami Branch of the N.A.A.C.P. was current and in good standing, but was sure of the year previous. (R.64) His membership in N.A.A.C.P. went back about ten years. (R.64) He was an ex-vice president of the Miami Branch of N.A.A.C.P. (R.65) This witness recognized photographs of the following identified members of the Communist Party in Dade County:

1. Michael Shantzek (R.65)
2. Leah Benomovsky (R.66)
3. Myron Marks (R.67)
4. Charlie Smolikoff (R.67)
5. Leo Sheiner (R.69)
6. Abe Sorkin (R.70)
7. James Nimmo (R.70)
8. Ed Waller (R.71)
9. Augusta Birnberg (R.72)

Smolikoff, identified by Strickland as a man who used the alias of Charles Doraine, Charles Small, Charles Stevens and Charles Boraine and who had carried Communist Card No. 64511, and who was a top organizer in the unions of Dade County, Florida. (R.26) told the witness, Sands, that they (Communist Party) " * * * didn't have no organization here, and they needed an organization of that sort, the FDR Club, and that's

why he was trying to organize one." (R.68) This witness stated Smolikoff probably was the founder of the FDR Club and discussed it with him before it was founded. (R.68) This witness had seen every established member of the Communist Party, whose photograph he identified at various meetings in Dade County. He knew Leo Sheiner attended the meetings of the N.A.A.C.P. (R.69) He thought he had seen Abe Sorokin and James Nimmo at N.A.A.C.P. meetings. (R.70) He could not specifically recall whether he had seen the others at N.A.A.C.P. meetings, or whether he had seen them at other types of meetings.

As shown on Page 13 of Petitioner's Brief, some of the fourteen Communists whose pictures were exhibited to the witnesses Albury, Perry and Graves, were seen occasionally at N.A.A.C.P. meetings.

In addition to the fourteen Communists whose photographs were exhibited to the witnesses, Mr. Strickland identified thirty-three other people who were, up to the very recent past, either members of the Communist Party itself or active participants in the Communist Party front organizations in Miami, Dade County, Florida. (R.28) In addition, he identified five others as Communist Party members by their card numbers. (R.29) The following questions and answers, while petitioner Gibson was on the stand, appear on Pages 44 and 45 of the Record:

"Q. Now, the names, of course, of people that I just called off to you, sometimes you recognize the name, sometimes you don't?

A. That's true.

Q. Sometimes you associate a face with a name; sometime you don't?

A. (The witness nodded affirmatively)

Q. I have here in front of me, Reverend, a list of thirty- (fol.88) three people who, the information in the Committee's files and previous testimony show have recently been members, either of the Communist Party or actively affiliated with some one or more Communist front organizations in Dade County; and I want to know whether or not—I don't have photographs of these people that I can show you; I want to know whether or not you will, or whether you will refuse to bring your membership lists here for the purpose of comparing them with these thirty-some-odd names that I have here before me, which you might identify some or you might not, off of your membership list, whereas you might not recognize the name?

Will you do that or will you not?

A. Counsel, our position is that if you call those names, and I know those people, I will acknowledge, honestly and truthfully, but so far as identifying those people on the basis of our membership lists, sir, I must respectfully say that we will not bring it, we will not do that." (R.44,45)

In addition to all of the above, the petitioner Gibson testified that each year since 1950, the N.A.A.C.P. in national convention had passed a resolution concerning Communists. (R.34) He gave copies of the resolution to the Committee and asked that they be made a part of the record. (R.35) The resolution reads as follows:

"Anti-Communism"

"Whereas, *certain branches* of the National Association for the Advancement of Colored People *are being rocked by internal conflicts between groups who follow the Communist line and those who do*

not, which threaten to destroy the confidence of the public in the Association and which will inevitably result in its eventual disruption; and

(fol.228) Whereas, *it is apparent* from numerous attacks by Communists in their official organs 'The Daily Worker' and 'Political Affairs' upon officials of the Association *that there is a well-organized, nationwide conspiracy by Communists either to capture or split and wreck the NAACP; therefore be it*

Resolved, that this *Forty-First Convention* of the National Association for the Advancement of Colored People go on record as unequivocally condemning attacks by Communists and their fellow-travelers upon the Association and its officials, and in order to safeguard the good-name of the Association, promote and develop unity, eliminate internal ideological friction, increase the membership and build the necessary power effectively to wage the fight for civil rights, *herewith, call upon, direct and instruct the National Board of Directors to appoint a committee to investigate and study the ideological composition and trends of the membership and leadership of the local units with a view to determining causes of the aforementioned conflicts, confusion and loss of membership; be it further*

Resolved, that this Convention go on record as *directing and instructing the Board of Directors to take the necessary action to eradicate such infiltration, and if necessary to suspend and reorganize, or lift the charter and expel any unit, which, in the judgment of the Board of Directors, upon a basis of the findings of the aforementioned investigation and study of local units comes under Communist or other political control and combination."*
(R.119,120, emphasis supplied)

The above resolution is sufficient standing alone to establish the necessary nexus between the N.A.A.C.P. on the one hand and Communist activities on the other, to form the foundation, on a showing of probable cause, which justifies the interference with any associational freedom which might be involved in this investigation. Certainly the resolution taken in connection with the facts above set out in the record are more than amply sufficient to establish this necessary nexus. The resolution constitutes a ringing indictment of the N.A.A.C.P. and it must be assumed that the association in solemn convention assembled would not continue to put such a resolution upon its public record if the factual allegations concerning infiltration of the association by Communists were not true.

The inescapable conclusion is that these facts make the *ratio decidendi* of the *Barenblatt*, *Braden*, *Wilkinson* and *Uphaus* cases, *supra*, applicable to and controlling of the case at bar. It requires no argument to demonstrate that if the facts in the case are sufficient to set the rationale of those decisions in action, they require the affirmance of the petitioner's conviction. Indeed, the petitioner admits as much on Pages 16 and 17 of his Brief.

The Circuit Court of Leon County and the Supreme Court of Florida in the case of *Theodore R. Gibson v. Florida Legislative Investigation Committee*, 126 So. 2nd, 129 speaking on the record in the case at bar, specifically found that the facts above recited were sufficient to bring the instant cause within the ambit of the *Barenblatt* case.

Petitioner's Position No. 4

Finally, the petitioner contends that the Florida Legislative Investigation Committee is motivated by improper impulses to expose for the mere sake of exposure and to punish and destroy the N.A.A.C.P. In this connection, the petitioner's Brief contains several unsupported and untrue attacks upon the motives of the Committee. Not only are these attacks untrue, they are unsupported by the record. Three glaring examples of the above are as follows:

"The record conclusively demonstrates petitioner submits that the only real basis for the Committee's investigation of the N.A.A.C.P. and its efforts to link it with subversion is the fact that the Committee is opposed to the organization's advocacy of desegregation and seeks to use state power to impair the N.A.A.C.P.'s effectiveness * * *" (Petitioner's Brief, Page 24)

"Respondent is attempting to use a valid legislative mandate, viz., authority to investigate organizations advocating violence or violation of the laws, to curb N.A.A.C.P. activities by posing a threat of exposure of the organization's members, and of publicly tainting the organization as being Communist dominated. * * *" (Petitioner's Brief, Page 25)

"Here the committee is in disagreement with the Association's use of the courts and other lawful means to promote desegregation. It attempts to use its legislative mandate to coerce the giving up of the right to associational privacy of members of the N.A.A.C.P. The damage which will result, in terms of the deterrent effect upon the exercise of personal liberty by members and prospective members is amply demonstrated by this record." (Petitioner's Brief, Page 26)

In his effort to demonstrate that the Committee is seeking simply to destroy N.A.A.C.P., petitioner improperly represents to the Court that no remedial legislation dealing with the problem of Communist infiltration into the organizations operating in the field of race relations resulted from the Committee's investigation in either the 1957 or 1959 session. (Petitioner's Brief, Page 8) He entirely omits to inform the Court that he and his association have effectively stymied the completion of the investigation since 1957 with a studied and deliberate course of definance and obstruction to the Committee and resort to a series of unnecessary appellate proceedings.

It neither adds to nor detracts from the merits of the case, nor the legal issues before the Court, but it is just as proper for the respondent to point out that it and its predecessor committees, referred to in the record, investigated John Casper, Klu Klux Klan and the Seaboard White Citizens Counsel, as it is for the petitioner to pretend that the sole aim of the Committee has been the destruction of the N.A.A.C.P.

The motives of the members of the Committee cannot vitiate the investigation even if it be assumed that the petitioner is right in regard to his opinion of the reason for the investigation. See *Barenblatt v. United States*, 360 U. S. 109, 3 L.Ed. 1115, 79 S. Ct. 1081. In *Barenblatt*, this Court said:

"* * * Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress was purely 'exposure'. So long as Congress acts in pursuance of its constitutional

power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power * * *

To like effect, see *Watkins v. United States*, 354 U.S. 178, *Wilkinson v. United States*, 365 U.S. 399 and *Braden v. United States*, 365 U.S. 431.

In the case of *Theodore R. Gibson v. Florida Legislative Investigating Committee*, 108 So.2d 729, Text 737-740, the Supreme Court of Florida points out the valid power of the legislature of Florida to conduct this investigation.

In the last analysis, the petitioner is seeking to have this Court throw up a constitutional sanctuary from inquiry into matters which are otherwise within the constitutional legislative domain, merely because the inquiry is made of someone engaged in racial relations as an associational group. In an analogous situation, this Court in the *Barenblatt* case, *supra*, declined to erect such a barrier of constitutional sanctuary around educational institutions. See *Barenblatt* where in this Court said:

"* * * But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls."

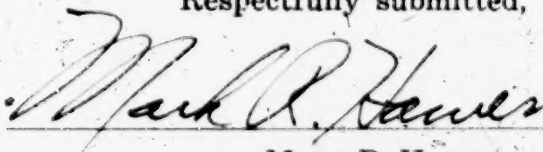
CONCLUSION

The parties to this cause are in substantial agreement on the law. Basically, this case hinges entirely on the question of whether the evidence before the Committee is sufficient to show probable cause or nexus between the N.A.A.C.P. Miami Branch, and Communist activities. If it is the rationale of the decisions of this Court in *Barenblatt*, *Braden*, *Wilkinson* and *Uphaus*, *supra*, are controlling and the petitioner's conviction must be affirmed. If it is not the rationale of the decisions of this Court, in *N.A.A.C.P. v. Alabama*, 357 U.S. 499, and *Bates v. Little Rock*, 361 U.S. 516, and similar cases are controlling, petitioner's conviction should be reversed.

The record shows that some members of the N.A.A.C.P. do not attend its meetings. Petitioner admits he may not recollect some names of members relying upon his memory alone. Recourse to the records by the petitioner himself to verify his answer, furnishes to the state the bare minimum cooperation it needs to conduct its investigation. At the same time, this procedure grants the maximum protection to N.A.A.C.P. and its members. All members who are not shown to have engaged in subversive activities remain anonymous.

In fine, the sole question is whether or not the trial court had sufficient evidence before it, which, if believed, was sufficient to show the necessary nexus. We submit that the evidence was amply sufficient and that the time-honored rule that appellate courts are bound by findings of fact, made by the trier of fact, when the evidence is sufficient to support those findings, should be applied in this case with the result that petitioner's conviction should stand affirmed.

Respectfully submitted,



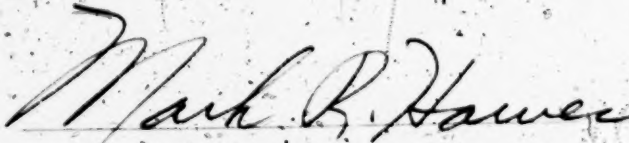
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ERLE B. ASKEW,
of Counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Respondent has been furnished to Mr. Robert L. Carter, 20 West 40th Street, New York 18, N. Y. and to Mr. G. E. Graves, Jr., 802 N.W. 2nd Avenue, Miami, Florida, Attorneys for Petitioner, by mail this 28th day of October, 1961.

A handwritten signature in cursive script, reading "Mark R. Hawes", written in dark ink over a horizontal line.

MARK R. HAWES

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Attorney for Respondent